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## Appeal Decision

Hearing held on 15 April 2025

Site visits made on 14 and 30 April 2025

**by Bhupinder Thandi BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 May 2025.

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**Appeal Ref: APP/D3125/W/24/3351969**

**Land north of Woodstock Road, Charlbury**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Bob Mackenzie against the decision of West Oxfordshire District Council.
  - The application Ref is 23/02399/FUL.
  - The development proposed is a residential development comprising of 28 dwellings (inc. 50% affordable housing), the provision of public open space and landscaping, demolition of existing garages and provision of new garaging, a vehicular access via Woodstock Road and pedestrian access to Hughes Close together with associated works.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Following determination of the application by the Council, the appellant has submitted revised plans showing plots 25-28 reorientated 90 degrees. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals. The guidance is clear that it is important that what is considered at appeal is essentially the same scheme that was considered by the local planning authority and interested parties at application stage.
3. Having regard to the Holborn Studios judgement<sup>1</sup> which follows on from Wheatcroft<sup>2</sup> given the nature of the amended plans and the relationship with neighbouring properties and the potential effects, and in the interests of fairness, I have therefore determined the appeal on the basis of the plans and information that were before the Council when it made its decision and on which all parties were consulted
4. An application for an award of costs was made by Mr Bob Mackenzie against West Oxfordshire District Council. This application is the subject of a separate decision.

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<sup>1</sup> Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

<sup>2</sup> Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

## Main Issues

5. The main issues are:

- The effect of the proposed development upon the character and appearance of the area including the Cotswolds National Landscape (NL);
- Whether the proposal would be acceptable in terms of design and layout;
- Whether the proposal would provide satisfactory living conditions for future occupiers;
- Whether the proposal would preserve or enhance the character or appearance of the Charlbury Conservation Area (CCA); and
- The effect of the proposal upon the living conditions of the occupiers of 36 Little Lees with regard to light and outlook.

## Reasons

### *Effects upon character and appearance including the Cotswolds NL*

6. The main part of the appeal site comprises a field with the boundaries comprising trees and thick unmanaged and outgrown hedgerows. The ground levels across the site fall towards the south with the northern part being most elevated. Despite its rural appearance the site is influenced by established residential development extending along part of its western boundary and to the northeast and which are apparent from within the site. The sense of tranquillity is also affected by these urban influences as well as traffic movements on Woodstock Road.
7. Development to the west is formed of a dense suburban housing estate whereas to the east is dispersed housing loosely following the alignment of Woodstock Road. The site alongside the field to the north and the neighbouring arc of woodland are understood as modestly sized, enclosed and discreet landscape features. This is in contrast to the large expansive field patterns that extend towards the north and northwest. The site acts as a transition between the eastern edge of Charlbury and open countryside formed of large-scale agrarian fields. Public footpaths extend to the north and west of the site, however, intervening vegetation and fields mask views of the site.
8. The site is located within the Cotswolds NL, which is the largest National Landscape (NL) in England. The statutory purpose of a NL is to conserve and enhance the natural beauty of the area. The special qualities of a NL are those aspects of the area's natural beauty which make the area distinctive, and which are considered valuable. The Cotswolds NL Management Plan sets out that the Cotswolds is a rich mosaic of historical, social, economic, geological, geomorphological and ecological features. Its special qualities include large open, elevated predominantly farmed landscapes with commons, big skies and long-distance views; distinctive dry-stone walls; tranquillity and distinctive settlements developed in the Cotswolds vernacular with high architectural quality and integrity.
9. The site lies within the semi-enclosed limestone wolds of the Lower Evenlode Valley which is characterised by large scale, smoothly rolling farmland, intensively cultivated under arable with some pasture, generally large-scale rectangular fields

- enclosed by dry-stone walls and low hawthorn hedges and occasional woodland. The area has a semi-enclosed character providing some visual containment.
10. The appellant's Landscape and Visual Impact Assessment (LVIA) indicates that the site is an isolated pocket in the landscape and does not display key qualities of the Cotswolds NL. It goes on to advise that the site makes a limited contribution to the Cotswolds NL due to its enclosed nature which limits perception of the site and its lack of key features. Furthermore, its tranquillity is affected by surrounding urban influences. The appellant contends the site has moderate sensitivity to change.
  11. In its current form, the site displays some characteristics of the Lower Evenlode Valley namely its open sloping nature together with its verdant boundaries. However, it is distinct from the large open field pattern on this side of Charlbury and does not contribute to the wider landscape on account of its enclosed nature and position sandwiched between established built form. Although once thought to have been arable, it is now semi-improved grassland reflecting nearby domestic influences.
  12. The proposed access would lead to the removal of vegetation along the road frontage. It would open up the site and the removal of a section of hedgerow would have an urbanising effect, changing the semi-rural character of this part of the road. There is no doubt that the development of the site through the loss of a green field and the introduction of built form, hard surfacing and associated infrastructure would result in a major adverse change in landscape terms as set out in the LVIA.
  13. As set out in the LVIA, the visual effects would be limited to localised views from nearby footpaths and neighbouring properties, filtered by vegetation, and fleeting views from Woodstock Road resulting in a minor to moderate adverse effect from some viewpoints factoring in seasonal variations. When travelling along the public footpaths to the north of the site a new residential development would not come as a surprise to users given the presence of existing dwellings and resultant domestic influences.
  14. The site boundaries comprise thick outgrown hedgerows and trees of varying heights and maturity including non-native and invasive species. Whilst a Tree Preservation Order covers trees on site given the findings of the appellant's arboricultural information there is no substantive evidence that trees protected by the Order remain on site. Moreover, nearly three quarters of the trees are of low or poor quality and a number are showing signs of disease and decay and have limited life expectancy.
  15. In my view the removal of non-native and evasive species combined with the cutting-back, layering and maintenance of the overgrown hedges with a more managed hedgerow around the perimeter of the site would allow higher quality and native species to flourish and would be more akin to the managed field boundaries found locally. Whilst it would take a number of years for new vegetation to become fully established, I am satisfied that through proactive and comprehensive management existing and proposed planting would help blend the development into the landscape and provide a degree of screening from identified viewpoints reducing the visual impact and positively contributing to the character of the area.
  16. Whilst a number of plots around the edges of the development would be positioned close to the vegetated boundaries there would be an offset of at least 2m. In my view this would be sufficient to prevent concerns arising from future occupiers. The

suggestion that there would be pressure to remove trees and vegetation due to proximity, leaf and sap droppings seems to me to be speculative rather than substantive. This is also the case in respect of the comments made about the future management arrangements.

17. Based on the appellant's arboricultural evidence and subject to appropriate construction, landscaping and management conditions I see no reason to come to a view that the proposed development would jeopardise the viability of trees on site. I therefore find that the issues raised by the Council in respect of trees and hedges are not well-founded, and do not weigh against the proposal.
18. The National Landscape designation does not preclude development and there would be beneficial impacts from the Cotswolds vernacular design and a landscape led approach mainly in the form of the managed boundary buffer. Albeit on a small and enclosed field atypical of the wider landscape there would be a major adverse change through the development of a green field for residential development and the introduction of built form, hard surfacing and associated infrastructure.
19. Given the overall size of the Cotswolds NL and the particular characteristics of the site its loss to development would not be significant in the context of the key qualities and landscape features of the Cotswolds NL as a whole. That said, paragraph 189 of the National Planning Policy Framework (the Framework) states that great weight should be given to conserving and enhancing landscape and scenic beauty in National Landscapes which have the highest status of protection in relation to these issues. The scale and extent of development within these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.
20. The Framework states that for the purposes of paragraph 190 it is a matter for the decision maker to determine whether a proposal constitutes major development in a NL. The appellant, Council and Cotswolds Conservation Board are of the view that the proposed development would not be major development in the Cotswolds NL. Based on the evidence before me I have no reason to conclude otherwise.
21. Drawing all these matters together I find that, on balance, the proposed development would result in adverse landscape impacts upon the scenic beauty of the Cotswolds NL. For these reasons, it would be contrary to Policy EH1 of the West Oxfordshire Local Plan (2018) (LP) and Policy HE2 of the Charlbury Neighbourhood Plan (2021) (NP) which, amongst other things, state that great weight will be given to conserving and enhancing the area's natural beauty, landscape and countryside and consideration of any harm to the contribution that the settlement makes to the scenic beauty of the AONB and require development proposals to conserve and enhance the natural beauty, landscape and countryside of the Cotswolds AONB.

### *Design and layout*

22. The appeal scheme comprises a residential development of 28 dwellings with a road extending northwards from Woodstock Road and culs de sac leading off the road. The development would include pockets of green infrastructure, boundary landscape buffers and an attenuation pond.

23. The proposal would be proportionate and appropriate to the scale of Charlbury forming a logical extension of the built form eastwards. That said, it is unlikely that the site could be designed in a manner that would form a complement to properties in Little Lees and Hughes Close given the presence of the thick boundary vegetation and the relatively modest size of the site and the proposal before me. The proposed development would be largely enclosed and visually contained, due to the dense boundary vegetation, and essentially inward looking. In my view it would not be seen as a continuation of neighbouring streets but as a discreet scheme when perceived by the viewer on the ground, but I do not find this to be unacceptable given the context.
24. The Council describe the architecture as neo-Cotswolds, and the proposed dwellings take influences from the Cotswold architectural vernacular through the use of local stone and slate. They would also incorporate features including steep roofs and chimneys on some plots. Whilst the Council is critical of the use of certain design features and the positioning of windows, I am not so upset by their inclusion and arrangement and noted similar examples locally during my site visits.
25. In my view a facsimile of historic buildings in Charlbury on the site would result in an inappropriate pastiche development. The immediate context is defined by a plethora of building styles and the site has no visual or physical connection with the centre of the town. On this basis, I find that the contemporary approach adopted by the appellant would be appropriate resulting in a scheme that respects and builds on local vernacular as advocated in the West Oxfordshire Design Guide and the NP.
26. I acknowledge that the entrance frontage would be softened by green landscaping and the layout becomes more dispersed towards the north of the site reflecting the transition in the built form. However, the eastern part of the site appears overly engineered emphasised by the parking courtyard positioned behind plots 1 and 2 and the garage block to the north of plot 13 which is dominated by large areas of hardstanding and a concentration of parked vehicles giving rise to the perception of an intensively developed and urban form of development. The layout also fails to provide visual stops or landmark features including at the end of key vistas at the north and east of the site failing to represent high quality design.
27. In coming to my decision, I have paid regard to the constraints in respect of topological, technical and design matters. However, these factors do not overcome my concerns in respect of this main issue.
28. As such, the design and layout as proposed would represent poor quality design and would fail to successfully create a sense of place. It would be contrary to LP Policies OS2, OS4, H2 and BC1 and NP Policy HE2 which, amongst other things, seek high quality design, safe, pleasant and interesting environments and new development to positively enhance the character and appearance of its immediate locality.

*Whether the proposed development would provide satisfactory living conditions for future occupiers*

29. I note the representations received by Thames Valley Police in respect of crime prevention design. Conditions for additional hard and soft landscaping details, boundary treatments and external lighting could be imposed to address some of their concerns, if I was minded to allow the appeal. There is also no credible

evidence to suggest that the proposed green spaces would attract criminal or anti-social behaviour.

30. A number of houses would face onto sections of the parking spaces along the entrance road providing a degree of passive overlooking of this area. I find the distance that residents would have to walk from their cars to their dwellings would not be unacceptable and this area would bring animation to this part of the development associated with the comings and goings of vehicles and residents.
31. That said, the layout as proposed would result in areas of the site being devoid of any activity or passive overlooking and essentially areas of dead space including the aforementioned courtyard, the approach to plots 19 and 20 and the pedestrian route from Hughes Close. These areas are unlikely to feel pleasant or safe for occupiers as they move through the site particularly during the hours of darkness.
32. The resultant fear of crime would not provide favourable living conditions for future occupiers of the proposed development. This would be contrary to LP Policy OS4 which, amongst other things, seeks high quality, inclusive and sustainable design and the provision of a safe, pleasant, convenient and interesting environment where the quality of the public realm is enhanced and the likelihood of crime and fear of crime is reduced.

#### *Effects upon the CCA*

33. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 outlines a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
34. The CCA boundary includes the entire town and swathes of surrounding countryside. Charlbury's historic development is linked to agriculture and the wool trade from the middle of the twentieth century. The settlement core is focused on Church Street, Sheep Street and Market Street marking its origins and subsequent development. The significance of the CCA is in part derived from its historic layout with buildings reflecting its early origins and its historic economic success linked to the surrounding landscape.
35. There is some dispute between the main parties regarding the historical significance of the site and its contribution to the historic environment. The appellant's Statement of Heritage indicates that the site could have been arable land due to the potential presence of buried plough furrow. Whilst the outer field boundaries have largely remained unchanged the tithe and historic ordnance maps suggest that the site may have been divided into two before being amalgamated into one field. In any event, based on the available evidence I am satisfied that the site formed part of the wider agrarian open field system associated with Charlbury.
36. Whilst there is no visual connection between the site and historic settlement core of Charlbury developing the site would undermine its open nature, erode its relatively unaltered boundary alignment as well as its functional relationship with the historic core of Charlbury. Overall, this would undermine the sites contribution to the significance of the CCA. The proposal would therefore be contrary to LP Policies OS4, EH9 and EH10 which, amongst other things, seek to conserve or enhance areas, buildings and features of historic significance including designated assets and the special interest, character and appearance of conservation areas.

### *Heritage balance*

37. Whilst the main parties are in dispute about the degree of harm, they both agree that the proposal would lead to less than substantial harm to the designated heritage asset through development within the CCA.
38. The Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.
39. In this particular instance I find the harm to be less than substantial but nevertheless of considerable importance and weight. Under such circumstances, paragraph 215 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
40. The public benefits of the proposed development include the provision of 28 homes including 14 affordable dwellings and a net gain in biodiversity of 22.4% in habitat units and 26.81% in hedgerow units.
41. In my judgement these benefits would clearly outweigh the less than substantial harm to the significance of the CCA and therefore the proposed development would accord with the historic environment objectives set out in the Framework.

### *Living conditions of existing occupiers*

42. The proposed development includes the construction of a two-storey block containing four apartments positioned to the south of dwellings on Little Lees. It would be sited within 2m of the boundary of 36 Little Lees and positioned close to its front elevation.
43. In the front and side elevation, facing the appeal site, are habitable room windows positioned at ground floor serving a lounge. Whilst to some extent the windows are obscured by the existing boundary fence and vegetation the height and the position of the built form in very close proximity to No.36 would be visually intrusive.
44. The proposed development would therefore have a significant overbearing effect on the occupiers of this property severely diminishing their living conditions in terms of loss of light and outlook.
45. I conclude that the proposed development would demonstrably harm the living conditions of neighbouring occupiers contrary to LP Policies OS2 and OS4 which, amongst other things, seek high quality design that does not have a harmful impact on the amenity of existing occupants.

### **Other Matters**

46. There is no substantive evidence before me that the proposed development would increase the risk of flooding, unduly affect wildlife and protected species or adversely affect the safe and efficient operation of the local highway network. Nor is there anything to suggest that it would put additional pressure on local services and infrastructure.

## Planning Obligations

47. The s106 agreement covers a number of planning obligations that are required by the LP to ensure the facilities and services that are essential for development to take place are delivered or mitigate its impact.
48. Given the policy requirements and infrastructure needs arising from the development I am satisfied that all of the obligations set out in the s106 are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development. They would accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

## Planning Balance

49. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
50. The Framework, at paragraph 78, states that local planning authorities should identify and update a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing, including an appropriate buffer.
51. The main parties agree that the Council is unable to demonstrate a sufficient five-year supply of housing land but dispute the extent of the shortfall. The Council suggest that it is in the region of 4.3 years, although they acknowledge that with application of the standard method for calculating housing need there is likely to be further deterioration in the supply. The appellant at the hearing advised that he considered the supply to be more likely in the region of 3.5 years.
52. Paragraph 11 d) states where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless one of two scenarios apply.
53. Firstly paragraph 11 d) i states that permission should not be granted when the application of policies in the Framework that protect areas or assets of particular importance, as set out in Footnote 7, provides a strong reason for refusing the development proposed. National Landscapes are one such protected area.
54. In such circumstances I am required to undertake a balance of harm against the benefits for non-major development in a NL in accordance with the Monkhill<sup>3</sup> judgement. In this regard although the development would result in localised landscape harm it would not have a significant adverse effect on the purposes for which the Cotswolds NL has been designated. In this regard I find the economic, social and environmental benefits associated with boosting the supply of housing, the provision of affordable housing and gains in biodiversity would outweigh the harm to the landscape and scenic beauty of the NL. As such, the harm to the Cotswold NL would not constitute a strong reason for refusing the proposal.
55. In such circumstances paragraph 11 d) ii of the Framework is engaged. It states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits having particular regard to key policies for directing development to sustainable locations, making effective

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<sup>3</sup> Monkhill Ltd V SSHCLG & Waverley Borough Council [2019] EWHC 1993 (Admin)

use of land, securing well-designed places and providing affordable homes, individually or in combination.

56. It is evident that there is a pressing need for housing when considering the shortfall. As such, the delivery of 28 dwellings would make a reasonable contribution towards the area's housing supply providing housing that would meet the needs of the area, and its scale means it would likely be built out relatively quickly. The delivery of market units attracts significant weight in favour of the proposal. This is also the case for the delivery of affordable dwellings given the number of people on the waiting list for such properties and affordability issues in the area.
57. Turning to the economic implications - the development would provide jobs, but this would largely be limited to the construction phase. The proposal would be in good proximity to services and facilities with alternative options to car travel. New residents would support local services and facilities including ones located within the town centre through increased expenditure. These social and economic benefits attract moderate weight in favour of the proposal.
58. The planning obligations would contribute towards supporting or improving local facilities and infrastructure. However, these would essentially mitigate the impact of the proposed development in planning terms. As such, these are matters of neutral consequence in the overall balance.
59. The Framework makes clear that good design is a key aspect of sustainable development. Decisions should ensure that developments will function well and add to the overall quality of the area; establish or maintain a strong sense of place, create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime do not undermine the quality of life. Even taking into account the objective to significantly boost the supply of housing and the Council's housing land supply position, the conflict between the proposal and the most important policies in the development plan should be given very significant weight in this appeal.
60. In the context of the above, and taking into account the aforementioned other considerations, I find that the identified adverse impacts of the development would significantly and demonstrably outweigh the identified benefits of the proposal, when assessed against the policies in the Framework taken as a whole. Consequently, I conclude that the proposal would not deliver a sustainable form of development. Therefore, the appeal is dismissed.

## **Conclusion**

61. For the reasons set out above the appeal does not succeed.

*B Thandi*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Paul Fong – Morgan Elliott Planning

Mr Grant Bayliss – Morgan Elliott Planning

Mr Mike Davies – Davies Landscape Design

Mr Kenyon Simon Sheppard – Tree Maintenance Limited

Dr Jonathon Turnock – Pegasus Group

Mr Jonathon Nettleton – Blake Architects

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Chris Wood – Senior Planner (Appeals)

Ms Claire Bennett – Oxfordshire County Council

### **INTERESTED PARTIES**

Mr and Mrs Staddon – Local residents